

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ISIDORE CORWIN AND BONNIE
CORWIN,

Plaintiffs,

V.

B'NAI B'RITH SENIOR CITIZEN
HOUSING, INC., SOUTHEASTERN
PROPERTY MANAGEMENT, INC.,
AND LYNNE ROTAN, an agent,
servant or employee of B'Nai B'Rith
Senior Citizen Housing, Inc.,

Defendants.

C.A. No.: 1:07-cv-00152-***

JURY TRIAL DEMANDED

**DEFENDANTS', B'NAI B'RITH SENIOR CITIZEN HOUSING, INC., SOUTHEASTERN
PROPERTY MANAGEMENT, INC., AND LYNNE ROTAN, REPLY BRIEF IN
SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

/s/ Daniel A. Griffith DE ID 4209

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Property Management, Inc., and
Lynne Rotan*

Dated: May 16, 2007

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NATURE AND STAGE OF THE PROCEEDINGS

Defendants, B'Nai B'Rith Senior Citizen Housing, Inc., Southeastern Property Management, Inc., and Lynne Rotan ("Defendants"), filed a Motion to Dismiss and Opening Brief in support thereof on April 25, 2007. (D.I. Nos. 7 and 8). On May 8, 2007, Plaintiffs Isidore and Bonnie Corwin ("Plaintiffs") filed a Response to Defendants' Motion to Dismiss which the Court construed as their Answering Brief in Opposition to Defendants' Motion to Dismiss. (D.I. No. 9).

This is Defendants' Reply Brief in support of their Motion to Dismiss.

ARGUMENT

I. PLAINTIFFS RAISE CONSTITUTIONAL ISSUES IN THEIR ANSWERING BRIEF THAT ARE INAPPLICABLE TO THEIR CASE.

A. Constitutional issues cannot arise from the Federal and Delaware Fair Housing Acts, and even if they did as Plaintiffs present, they would not involve Defendants because Defendants are not state actors.

Plaintiffs have based their action on alleged violations by Defendants of the Federal Fair Housing Act, 42 U.S.C. § 3601, *et seq.*, as well as the Delaware Fair Housing Act, 6 *Del. C.* § 4601, *et seq.*¹ Plaintiffs' Complaint includes two Counts, one arising under the Federal Act,² and the other under Delaware's version.³

Constitutional issues do not arise from either Act. Stated differently, an alleged violation of either Act does not equate to an alleged infringement on one's Constitutional rights. The Acts are statutory law passed by the Federal and Delaware state legislatures, respectively, but neither implicate the United States Constitution.

Nevertheless, despite that Plaintiffs' claims in their Complaint are not at all based upon Constitutional principles, their Answering Brief in Opposition to Defendants' Motion to Dismiss is based *entirely* on them. Plaintiffs' Answering Brief makes continual mention that Plaintiffs' First Amendment right of free speech was allegedly violated, provides that the appropriate standard of review is the strict scrutiny test, and the like. The issue in the present case, as pled by Plaintiffs themselves, is whether Defendants violated the Federal and Delaware Fair Housing Acts with their policy regarding the display of flags on residents' balconies. The issue is *not* free speech, whether a Constitutional right was violated, or the Constitution at all. Therefore, Plaintiffs essentially failed to respond to Defendants' Motion to Dismiss in any meaningful way.

¹ See Plaintiffs' Complaint at ¶ 7 (attached as Exhibit 1).

² *Id.* at ¶¶ 83-92.

³ *Id.* at ¶¶ 93-96.

Even if Constitutional issues did arise from the two Fair Housing Acts, which they do not, they would not involve Defendants because Defendants are not state actors. It is firmly established that a party alleging a Constitutional violation, whether directly under an Amendment or through 42 U.S.C. § 1983, must do so against a governmental, and not a private, actor.⁴ All of the Defendants are private actors, unable to violate the Constitutional rights of another. Therefore, even assuming that Plaintiffs were able to raise Constitutional issues under the Fair Housing Acts, Defendants would *still* be the wrong targets.

Defendants acknowledge that there are circumstances under which private actors can be treated as state actors, such as when governmental and private actors are heavily intertwined,⁵ or even more remotely, when a private actor conspires with state officials to deprive another of their Constitutional rights.⁶ Clearly, however, neither of these situations is present here. Governmental and private actors can actually have a connection without the private actor being deemed a state actor, such as with government funding of a private entity.⁷ In other words, whether or not Defendant B'Nai B'Rith Senior Citizen Housing, Inc. received Federal funds through the Department of Housing and Urban Development, or any other governmental source, is irrelevant because that Defendant, and in turn the other Defendants, would not be transformed into state actors thereby.

Frankly, Plaintiffs' filings to date are inconsistent. Plaintiffs alleged no Constitutional violations in their Complaint, but countered Defendants' Motion to Dismiss with strictly

⁴ *Barr v. The Camelot Forest Conservation Association, Inc.*, 153 Fed. Appx. 860, 862 (3d Cir. 2005)(attached as Exhibit 2).

⁵ *See Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961); *Smith v. National Collegiate Athletic Association*, 266 F.3d 152 (3d Cir. 2001).

⁶ *See Tower v. Glover*, 467 U.S. 914 (1984).

⁷ *See Crissman v. Dover Downs Entertainment, Inc.*, 289 F.3d 231, 243 (3d Cir. 2002)("[T]he Government may subsidize private entities without assuming constitutional responsibility for their actions.")(citation omitted).

Constitutional theories. This approach only confuses the case's issue as originally pled and leaves Plaintiffs with no meaningful response to Defendants' motion to dismiss.

B. Because Defendants' flag-display policy is uniform as to all tenants and national origins, Plaintiffs are unable to demonstrate that they are entitled to relief under any set of facts, and consequently, to defeat Defendant's Motion to Dismiss.

Defendants' entire argument on this point appears in their Opening Brief in support of their Motion to Dismiss and for the sake of brevity will not be duplicated herein. It is worthwhile to reiterate it generally, however, especially in light of Plaintiffs' Answering Brief that did not address it at all.

By Plaintiffs' admission, Defendants' flag-display policy, on its face, does not apply unequally to the tenants. Additionally, there has been no allegation by Plaintiff that the policy is enforced disparately as to the tenants. Therefore, as those are the two bases on which to bring a claim like Plaintiffs', and neither one is shown by Plaintiffs, they are unable to defeat Defendants' Motion to Dismiss and their action fails.

Defendants recognize and appreciate Plaintiffs' frustration at not being able to fly the American flag, at least in the manner they would like, but their co-tenants must abide by the same rule because the policy is not geared toward any particular national origin. Were a neighbor of Jamaican, Irish, Italian, or any other descent allowed to fly their flag in any way they chose under the policy while Plaintiffs were not, Plaintiffs would stand a chance of success in their suit, at least at the pleading stage. Because that is not the case, and the policy is equal as to all tenants, Plaintiffs' suit fails and should be dismissed.

CONCLUSION

For all of the foregoing reasons, as well as those contained in Defendants' Opening Brief in support of their Motion to Dismiss, it is respectfully requested that this Honorable Court dismiss Plaintiffs' Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

/s/ Daniel A. Griffith DE ID 4209

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Dated: May 16, 2007

EXHIBIT "1"

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ISIDORE CORWIN AND BONNIE CORWIN

CIVIL ACTION NO.: 07-152-

PLAINTIFFS,

-AGAINST-

COMPLAINT

(TRIAL BY JURY DEMANDED)

B'NAI B'RITH SENIOR CITIZEN HOUSING, INC.;
SOUTHEASTERN PROPERTY MANAGEMENT, INC.;
AND LYNNE ROTAN, AN AGENT, SERVANT OR EMPLOYEE OF
B'NAI B'RITH SENIOR CITIZEN HOUSING, INC.

DEFENDANTS

PLAINTIFFS ISIDORE CORWIN AND BONNIE CORWIN, PRO SE, UNDERSIGNED, BRING THIS COMPLAINT AGAINST THE ABOVE-NAMED DEFENDANTS AND THEIR AGENTS, SERVANTS, AND EMPLOYEES, AND IN SUPPORT THEREOF ALLEGE THE FOLLOWING ON PERSONAL KNOWLEDGE AS TO THEMSELVES AND THEIR OWN ACTIONS, AND UPON INFORMATION AND BELIEF AS TO ALL OTHER MATTERS.

PARTIES

1. PLAINTIFF ISIDORE CORWIN ("I. CORWIN") IS A CITIZEN OF THE UNITED STATES AND RESIDES IN THE STATE OF DELAWARE AT 8608 SOCIETY DRIVE, CLAYMONT, COUNTY OF NEW CASTLE, DELAWARE, 19703.
2. PLAINTIFF BONNIE CORWIN ("B. CORWIN") IS A CITIZEN OF THE UNITED STATES, IS THE LAWFUL SPOUSE OF PLAINTIFF ISIDORE CORWIN, AND RESIDES WITH HIM AT 8608 SOCIETY DRIVE, CLAYMONT, COUNTY OF NEW CASTLE, STATE OF DELAWARE, 19703.
3. DEFENDANT B'NAI B'RITH SENIOR CITIZEN HOUSING, INC. ("B'NAI B'RITH SENIOR") HAS ITS PRINCIPAL PLACE OF BUSINESS AT 8000 SOCIETY DRIVE, CLAYMONT, DE, 19703, AND ITS CORPORATE OFFICE AT 1103 R. ARRINGTON, JR. BOULEVARD SOUTH, BIRMINGHAM, ALABAMA, 35205.

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4. DEFENDANT SOUTHEASTERN PROPERTY MANAGEMENT, INC. ("SPM") IS A MANAGEMENT AGENCY, WITH ITS CORPORATE OFFICE AT 1103 R. ARRINGTON, JR. BOULEVARD SOUTH, BIRMINGHAM, ALABAMA, 35201.

5. DEFENDANT LYNNE ROTAN ("ROTAN") IS A PROPERTY MANAGER, WITH HER RESIDENCE AT 15 PENNSYLVANIA AVENUE, CLAYMONT, DELAWARE, 19703.

6. AT ALL TIMES RELEVANT TO THIS COMPLAINT, DEFENDANT ROTAN ACTED AS AN AGENT, SERVANT, OR EMPLOYEE OF B'NAI B'RITH SENIOR.

JURISDICTION AND VENUE

7. THE CIVIL ACTION ARISES UNDER TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, § 801, *ET SEQ.*, AS AMENDED BY THE FAIR HOUSING ACT OF 1988, 42 U.S.C.A. § 3601 ET SEQ., AND, MORE PARTICULARLY, 42 U.S.C.A. § 3604 (B). THERE IS A PENDANT STATE LAW CLAIM UNDER THE DELAWARE FAIR HOUSING ACT, DEL. CODE ANN. § 4601 ET SEQ. JURISDICTION IS CONFERRED ON THIS COURT PURSUANT TO 28 U.S.C. § 1331 AND 1343 (A)(3).

8. PLAINTIFFS' CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF ARE AUTHORIZED BY 28 U.S.C. § 2201 AND 2202, BY RULES 57 AND 65 OF THE FEDERAL RULES OF CIVIL PROCEDURE, AND BY THE GENERAL LEGAL AND EQUITABLE POWERS OF THIS COURT.

9. VENUE IS PROPER UNDER 28 U.S.C. § 1391(B) BECAUSE THE HOUSING PRACTICES ALLEGED HEREIN TO BE UNLAWFUL WERE AND ARE NOW BEING COMMITTED WITHIN THE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE.

10. THE DISCRIMINATORY ACTS IN THIS LAWSUIT CONCERN NATIONAL ORIGIN DISCRIMINATION ALLEGED BY THE PLAINTIFFS IN THE HANGING OF THEIR AMERICAN FLAG ON THEIR RENTED BALCONY AT DEFENDANTS' B'NAI B'RITH HOUSE APARTMENTS IN CLAYMONT, DELAWARE, WITH PLAINTIFFS' DISCRIMINATION COMPLAINT COMMENCING ON OR ABOUT JULY 27, 2006.

11. ON JULY 27, 2006, PLAINTIFFS TOOK STEPS IN A WRITTEN COMPLAINT TO THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (THE AVAILABLE ADMINISTRATIVE AGENCY AS TO CHARGES OF THE

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ALLEGED DISCRIMINATORY CONDUCT BY THE DEFENDANTS IN THEIR FLAG FLYING POLICY FOR TENANTS' BALCONIES AT THE B'NAI B'RITH HOUSE). PLAINTIFFS' COMPLAINT WENT TO THE PROJECT MANAGER, MS. ELAINE GARBON, WANAMAKER BUILDING, 100 PENN SQUARE EAST, PHILADELPHIA, PA, 19107. HUD FORWARDED PLAINTIFFS' GRIEVANCE TO MS. CHRIS KINNIKIN, HOUSING LOAN MANAGEMENT OFFICER, DELAWARE STATE HOUSING AUTHORITY, DOVER, DELAWARE, 19901, FOR INVESTIGATION.

12. THE RESULT OF THE SUBSEQUENT DSHA'S INVESTIGATION WAS, COMPLAINT "RESOLVED", AS DSHA'S ON-SITE OBSERVATION OF AUGUST 16, 2006 WAS THAT THERE WERE NO FLAGS FLYING ON TENANTS' BALCONIES AT THE B'NAI B'RITH HOUSE. DSHA INFORMED PLAINTIFFS OF ITS INVESTIGATIVE COMPLAINT DETERMINATION IN A LETTER DATED AUGUST 31, 2006.

13. SUBSEQUENT TO DSHA'S ABOVE AFOREMENTIONED DETERMINATION, PLAINTIFFS FORWARDED A LETTER TO DEFENDANT ROTAN ON SEPTEMBER 9, 2006, FORMALLY REQUESTING PERMISSION FOR PLAINTIFFS TO HANG AN AMERICAN FLAG ON THEIR RENTED BALCONY AT THE B'NAI B'RITH HOUSE.

14. ON SEPTEMBER 15, 2006, DEFENDANT ROTAN RESPONDED, IN WRITING, TO PLAINTIFFS' ABOVE AFOREMENTIONED REQUEST (AND AT THE SAME TIME TO ALL TENANTS) THAT TENANTS CANNOT HANG FLAGS ON THE THEIR BALCONIES, AND FOR ALL TENANTS, INCLUDING PLAINTIFFS, TO PROMPTLY REMOVE THEIR FLAGS FROM THEIR BALCONIES, OSTENSIBLY FOR SAFETY REASONS.

15. IN THE FACE OF OTHER TENANTS' PROTESTS REGARDING DEFENDANT ROTAN'S AFOREMENTIONED MEMO TO PROMPTLY REMOVE ALL FLAGS FROM TENANT BALCONIES, DEFENDANT ROTAN THEN SUDDENLY PROMULGATED NEW RULES ON SEPTEMBER 18, 2006 WITH A WRITTEN MEMO TO ALL TENANTS, INCLUDING PLAINTIFFS, THAT TENANTS CAN NOT HANG FLAGS, BUT MAY PUT A FLAG ON A STICK IN A FLOWER POT OR MAY DRAPE A FLAG ON A CHAIR ON TENANTS' RESPECTIVE BALCONIES.

16. ON SEPTEMBER 22, 2006, PLAINTIFFS FORWARDED A LETTER TO MRS. ROTAN THAT DRAPING THE AMERICAN FLAG IS AGAINST U.S. FLAG CODE.

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17. ON OCTOBER 3, 2006, DEFENDANT ROTAN NOTIFIED PLAINTIFFS, IN WRITING, THAT MR. DAVID SCHLECKER (A B'NAI B'RITH SENIOR DESIGNATED DIRECTOR & OFFICER) WAS PLANNING ON ATTENDING THE NEXT B'NAI B'RITH HOUSE TENANT ASSOCIATION MEETING IN ORDER TO ADDRESS THE FLAG ISSUE (TO TENANTS).

18. ON OCTOBER 11, 2006, MR. DAVID SCHLECKER ATTENDED THE OCTOBER 2006 TENANT ASSOCIATION MEETING, WHERE A CERTAIN TENANT, IN OPEN DISCUSSION, BROUGHT TO MR. SCHLECKER'S ATTENTION THAT TENANTS AT THE APARTMENT FACILITY ARE PERMITTED TO HANG PATIO UMBRELLAS ON POLES, STRAPPED ON TENANTS' RESPECTIVE BALCONY RAILS (CONTRARY TO DEFENDANTS' SEPTEMBER 15, 2006 MEMO THAT TENANTS CANNOT HANG FLAGS ON TENANT BALCONIES).

19. SUBSEQUENTLY, ON OCTOBER 12, 2006, PLAINTIFFS FORWARDED A LETTER TO DEFENDANT ROTAN STATING THAT PLAINTIFFS DO NOT CHOOSE TO PUT THEIR AMERICAN FLAG ON A STICK IN A FLOWER POT, AND REQUESTED AN ALTERNATIVE MEANS TO HANG THEIR AMERICAN FLAG, TO STRAP THEIR FLAG ON THEIR RESPECTIVE BALCONY RAIL (AS ARE THE HANGING PATIO UMBRELLAS ON OTHER TENANT'S BALCONIES).

20. ON OCTOBER 23, 2006, PLAINTIFFS REQUESTED, IN WRITING, TO DEFENDANT ROTAN, IF THE DEFENDANT WOULD RESPOND TO PLAINTIFFS' ABOVE AFOREMENTIONED REQUEST PRIOR TO VETERANS DAY 2006, IN ORDER THAT PLAINTIFFS COULD PREPARE FOR THE HOLIDAY.

21. ON OCTOBER 30, 2006, DEFENDANT ROTAN RESPONDED TO THE AFOREMENTIONED PLAINTIFFS' REQUEST (TO STRAP THEIR AMERICAN FLAG ON THEIR BALCONY RAIL), DEFENDANT ROTAN STATING IN A ONE-SENTENCE RESPONSE LETTER TO PLAINTIFFS, "THE ANSWER IS NO..."

22. HENCE, ON VETERANS DAY 2006, BOTH ON NOVEMBER 10, 2006, NATIONALLY OBSERVED VETERANS DAY, AND ON NOVEMBER 11, 2006, VETERANS DAY, PLAINTIFFS WERE DENIED THEIR ABILITY TO HANG THEIR AMERICAN FLAG ON THEIR BALCONY RAIL, WHILE OTHER TENANTS WERE PERMITTED TO OPENLY HANG PATIO UMBRELLAS ON THEIR BALCONY RAILS (UMBRELLAS EVEN LARGER THAN THE PLAINTIFFS' AMERICAN FLAG).

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23. ON VETERANS DAY 2006, DEFENDANTS PERMITTED ELEVEN (11) OTHER HANGING-LOCATIONS ON OTHER TENANTS' RESPECTIVE BALCONIES AT THE SUBJECT FACILITY, INCLUDING THE AFOREMENTIONED UMBRELLAS, THERMOMETERS, BALCONY-RAIL PLANTERS, WIND CHIMES, HANGING BELL, HANGING HOOK, AND BALCONY-RAIL FLAG HOLDER, EVEN THOUGH DEFENDANT ROTAN STATES NOTHING IS ALLOWED TO HANG ON TENANTS' BALCONIES AT THE B'NAI B'RITH HOUSE.

24. ON NOVEMBER 15, 2006, PLAINTIFFS FORWARDED A LETTER TO THE DEFENDANT ROTAN REQUESTING A "MANAGEMENT REVIEW" OF THE B'NAI B'RITH HOUSE PRESENT POLICY IN AMERICAN FLAG FLYING ON TENANTS' PRIVATE BALCONIES.

25. ON NOVEMBER 20, 2006, DEFENDANT ROTAN, IN WRITING, RESPONDED TO PLAINTIFFS' ABOVE AFOREMENTIONED REQUEST, WITH, "WE HAVE A RULE THAT YOU CANNOT ATTACH ANYTHING TO THE BALCONY...(THE FLAG) CANNOT BE ATTACHED OR AFFIXED TO THE BALCONY RAIL."

26. ON MARCH 14, 2007, BASED ON ALLEGED NATIONAL ORIGIN DISCRIMINATION BY THE DEFENDANTS, PLAINTIFFS REPORTED ALL INFORMATION ABOUT THE DEFENDANTS' ALLEGED VIOLATIONS OF THE FAIR HOUSING ACT TO HUD, WHERE PLAINTIFFS EXPLAINED THE FACTS AND CIRCUMSTANCES WHERE OTHERS WERE TREATED DIFFERENTLY FROM PLAINTIFFS, AND THAT THE DISCRIMINATION IS ONGOING, AND WHERE THERE ARE WITNESSES AND OTHERS WHO KNOW WHAT HAPPENED.

27. ALL STATUTORY PREREQUISITES TO THE FILING OF THE HOUSING DISCRIMINATION COMPLAINT, ACCORDINGLY, HAVE BEEN MET.

FACTS COMMON TO ALL COUNTS

28. DEFENDANTS B'NAI B'RITH SENIOR CITIZEN HOUSING, INC. OWN AND OPERATE, AND CONTROL THE EIGHT-STORY SENIOR CITIZEN APARTMENT BUILDING ("THE SUBJECT FACILITY") KNOWN AS THE B'NAI B'RITH HOUSE, AT 8000 SOCIETY DRIVE, IN THE CITY OF CLAYMONT, STATE OF DELAWARE, AND IS WHERE AT ALL TIMES RELEVANT HERETO, THE BUILDING'S MANAGEMENT AGENCY WAS AND IS DEFENDANT SOUTHEASTERN

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PROPERTY MANAGEMENT, INC., WHO MANAGE THE ELDERLY SECTION 202/8 APARTMENT COMPLEX; WITH DEFENDANT PROPERTY MANAGER ROTAN, WHO WAS AND IS AN AGENT, SERVANT, OR EMPLOYEE OF B'NAI B'RITH SENIOR CITIZEN HOUSING, INC.

29. DEFENDANT B'NAI B'RITH SENIOR RECEIVES, AND HAS IN THE PAST RECEIVED, FEDERAL SECTION 8 SUBSIDIES, 42 U.S.C. § 1437f, WHICH IS DESIGNED TO ALLOW LOW AND LOW-MODERATE INCOME PERSONS TO LIVE IN PRIVATELY OWNED HOUSING, UNDER SPECIFICALLY HUD'S HOUSING ASSISTANCE PAYMENT CONTRACT #DE26-H084-007, FOR THE OPERATION AND MAINTENANCE OF THE SUBJECT FACILITY, AT 8000 SOCIETY DRIVE, CLAYMONT, DELAWARE. THE CONTRACT WAS, AND IS, ADMINISTERED BY THE DELAWARE STATE HOUSING AUTHORITY.

30. AS A RECIPIENT OF FEDERAL HUD SUBSIDIES, THE DEFENDANTS, AT ALL TIMES RELEVANT HERETO, HAD, AND HAS, A DUTY UNDER TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968 AND THE FAIR HOUSING ACT OF 1988, TO REFRAIN FROM DISCRIMINATING AGAINST TENANTS, INCLUDING PLAINTIFFS, ON THE BASIS OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN, AND TO FOLLOW THE RULES, REGULATIONS, AND GUIDELINES FOR SUBSIDIZED LANDLORDS SET FORTH IN THE APPLICABLE HUD HANDBOOK NO. 4350.3.

31. AS THE OPERATOR OF A DWELLING IN THE STATE OF DELAWARE, DEFENDANT B'NAI B'RITH SENIOR ALSO HAS A DUTY UNDER THE DELAWARE FAIR HOUSING ACT TO REFRAIN FROM DISCRIMINATING AGAINST TENANTS, INCLUDING PLAINTIFFS, ON THE BASIS OF RACE, COLOR, RELIGION, OR NATIONAL ORIGIN.

32. PLAINTIFF ISIDORE CORWIN AND PLAINTIFF BONNIE CORWIN, SENIOR CITIZENS, MARRIED TO EACH OTHER, WERE ACCEPTED AS TENANTS AT THE B'NAI B'RITH HOUSE, BY THE DEFENDANTS, ON SEPTEMBER 24, 1992; AND MOVED INTO APARTMENT 608 AT THE B'NAI B'RITH HOUSE ON OCTOBER 25, 1992, SHORTLY AFTER THEIR MARRIAGE.

33. BOTH PLAINTIFFS ISIDORE CORWIN AND BONNIE CORWIN, AS YOUNG ADULTS, WERE SINCERE MEMBERS OF THE BOY SCOUTS OF AMERICA AND THE GIRL SCOUTS OF AMERICA, RESPECTIVELY; WHO EXPRESS THEIR

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ALLEGIANCE TO AMERICA, IN PART, BY DISPLAYING SYMBOLS THEREOF SUCH AS THE AMERICAN FLAG IN AND ABOUT THEIR APARTMENT AT SAID BUILDING, OPERATED AND CONTROLLED BY THE DEFENDANTS.

34. UPON THE TRAGEDY OF SEPTEMBER 11, 2001, DEFENDANT ROTAN, IN A HUD-APPROVED BUILDING ACTIVITY, WITH PROPER NOTICE TO TENANTS, ERECTED ONTO TENANTS' BALCONY RAILS, INCLUDING THE PLAINTIFFS' BALCONY RAIL, POLYESTER AMERICAN FLAGS (12"x 18" FLAGS ON A 24 1/4" STICK POLE) ON EACH BALCONY AT THE SUBJECT FACILITY, TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK. THE OUTDOOR BALCONY OF EACH TENANTS' APARTMENT EXTENDS APPROXIMATELY THE LENGTH OF A TENANTS' LIVING ROOM AND BEDROOM WITH AN APPROPRIATE RAILING.

35. WITH THE ABOVE AFOREMENTIONED DEFENDANTS' AMERICAN FLAG-HANGING ACTIVITY, THIS IS WHEN THE DEFENDANTS PUT NOTHING IN WRITING TO THE TENANTS TO THE EFFECT THAT THE BALCONY ACTIVITY WAS AN EXCEPTION TO ANY HOUSE RULE.

36. THE DEFENDANTS' AMERICAN FLAG-HANGING ACTIVITY, STRAPPED ONTO TENANTS' BALCONY RAILS, INCLUDING PLAINTIFFS' BALCONY RAIL, DISPLAYED THE AMERICAN FLAG, WHICH DEPICTED THE STARS AND STRIPES, AND HAD GREAT NATIONAL ORIGIN VALUE TO BOTH PLAINTIFFS.

37. PLAINTIFFS, TOO, PUT AMERICAN SYMBOLS AND PICTURES IN THEIR B'NAI B'RITH HOUSE APARTMENT (INSIDE), AND ON THEIR AUTOMOBILE'S VENT WINDOW AND REAR BUMPER, WHERE THE AMERICAN FLAG STICKER READS "OUR GOD REIGNS". PLAINTIFFS PURCHASED PATRIOTIC DVD'S; SANG PATRIOTIC SONGS; VIEWED PATRIOTIC TV; AND ISIDORE CORWIN (WHO WENT ON DAILY WALKS) SOMETIMES CARRIED THE AMERICAN FLAG AS HE WALKED (WITH PASSING MOTORISTS "TOOTING THEIR HORNS" IN AGREEMENT WITH THE DISPLAY).

38. PLAINTIFFS FURTHER EXPRESSED THEIR FERVENT PATRIOTIC ALLEGIANCE TO AMERICA BY ATTENDING SENIOR CENTER LUNCHEES, COMMENCING WITH THE "PLEDGE OF ALLEGIANCE" ("ONE NATION UNDER GOD"); LODGE NO. 470, B'NAI B'RITH, INC.'S SING-A-LONGS WHERE PATRIOTIC SONGS WERE SUNG; TRIPS TO HISTORIC BATTLEFIELDS AND

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MONUMENTS; AND A VISIT TO THE GRAVESIDE OF ISIDORE CORWIN'S FATHER (A VETERAN OF WORLD WAR I) WHERE THE FLAG WAS PLACED.

39. THE PRESENCE OF PLAINTIFFS' AMERICAN SYMBOLS AND IMAGES, INCLUDING THE AMERICAN FLAG, IN AND ABOUT THE PLAINTIFFS' APARTMENT UNIT, WAS KNOWN TO, OR SHOULD HAVE REASONABLY BEEN KNOWN TO, THE DEFENDANTS, PARTICULARLY DEFENDANT ROTAN, MANAGER OF THE SUBJECT FACILITY, THROUGH HER INSPECTIONS OF PLAINTIFFS' UNIT ONE OR TWO TIMES A YEAR AND HER RECEIPT OF PLAINTIFFS' "DECLARATION OF SECTION 214 CITIZENSHIP STATUS FORM", IN THE NORMAL COURSE OF HER WORK.

40. ON VETERANS DAY 2002 AND ON VETERANS DAY 2003, THE DEFENDANTS' HUD-SUBSIDIZED AMERICAN FLAG-HANGING ACTIVITY ON TENANTS' BALCONY RAILS WAS ACTIVE AND ONGOING.

41. WITH VETERANS DAY 2004, AND THE WEEK OF OCTOBER 17, 2004 APPROACHING (WHERE THE DEFENDANTS' HOSTED THE B'NAI B'RITH INTERNATIONAL SENIOR HOUSING CONVENTION) DEFENDANT ROTAN DIRECTED HER MAINTENANCE STAFF TO REMOVE ALL AMERICAN FLAGS IN THE DEFENDANTS' FLAG-HANGING ACTIVITY, FROM ALL TENANTS' BALCONY RAILS, OSTENSIBLY BECAUSE THE AMERICAN FLAGS HAD BECOME "WORE AND TATTERED".

42. IN THE ABOVE AFOREMENTIONED 2004 DEFENDANTS' REMOVAL OF ITS AMERICAN FLAGS FROM THE TENANTS' RENTED BALCONY RAILS, THIS IS WHEN THE DEFENDANTS PUT NOTHING IN WRITING TO THE TENANTS TO THE EFFECT.

43. POST THE DEFENDANTS' AMERICAN FLAG REMOVAL FROM THE TENANTS' PRIVATE BALCONY RAILS, SOME TENANTS HUNG THEIR OWN FLAGS ON THEIR RESPECTIVE BALCONIES, SOME FLAGS EVEN LARGER THAN THE DEFENDANTS' AMERICAN FLAG.

44. PLAINTIFFS, TOO, REPLACED DEFENDANTS' AMERICAN FLAG WITH THEIR OWN HANGING POLYESTER AMERICAN FLAG (3' x 5' FLAG WITHOUT A STICK POLE) WHICH HUNG ON PLAINTIFFS' BALCONY WALL ON CERTAIN NATIONAL HOLIDAYS, AS A CONTINUED EXPRESSION OF PATRIOTISM.

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45. AT THE SAME TIME THAT PLAINTIFFS DISPLAYED THEIR AMERICAN FLAG AND PATRIOTIC IMAGES, OTHER TENANTS AND THE BUILDING MANAGEMENT PROMINENTLY DISPLAYED SYMBOLS OF THEIR OWN OF AMERICA, SUCH AS FLAGS OR STICKERS DEPICTING THE AMERICAN FLAG AT THE SUBJECT FACILITY.

46. UPON INFORMATION AND BELIEF, BETWEEN THE YEARS 2001 AND 2005, THERE WAS A PASSIVE ACCEPTANCE BY THE DEFENDANTS IN FLAG FLYING ON TENANT RESPECTIVE BALCONIES AT THE SUBJECT FACILITY.

47. ON THE HEELS OF VETERANS DAY 2006, SPECIFICALLY ON SEPTEMBER 15, 2006, DEFENDANT ROTAN GAVE WRITTEN NOTICE TO THE TENANTS, INCLUDING PLAINTIFFS, OF THE STATUS OF DEFENDANTS' INTENTIONS, OF THEIR REPEATING (ALTHOUGH THEY HOPED NOT TO) THEIR AMERICAN FLAG HANGING ACTIVITY ON TENANTS' BALCONIES, IF THE NATION EXPERIENCED ANOTHER TERRORIST ATTACK, STATING:

"WE HUNG SMALL FLAGS ON THE BALCONIES...A SPECIAL CIRCUMSTANCE, WHICH WE HOPE WE NEVER HAVE TO REPEAT." (ROTAN MEMO, 9/15/06).

48. ADDITIONALLY, IN THE ABOVE AFOREMENTIONED SEPTEMBER 15, 2006 MEMO, IS WHERE MRS. ROTAN RESPONDED TO PLAINTIFFS' PARTICULAR SEPTEMBER 9, 2006 REQUEST (WHERE PLAINTIFFS REQUESTED PERMISSION TO HANG THEIR AMERICAN FLAG ON THEIR PRIVATE BALCONY), MRS. ROTAN STATING IN THE 9/15/06 MEMO THAT FLAGS ARE NOT ALLOWED ON BALCONIES AND FOR ALL TENANTS TO PROMPTLY REMOVE THEIR FLAGS.

49. ON OCTOBER 30, 2006, DEFENDANT ROTAN GAVE WRITTEN DENIAL TO PLAINTIFFS' OCTOBER 23, 2006 ALTERNATIVE REQUEST FOR PERMISSION TO HANG PLAINTIFFS' AMERICAN FLAG ON THEIR BALCONY RAIL (AS DEFENDANTS PERMIT OTHER TENANTS TO HANG PATIO UMBRELLAS ON THEIR BALCONY RAILS), THEREBY MAKING UNAVAILABLE PLAINTIFFS' ABILITY TO HANG THEIR FLAG ON THEIR BALCONY RAIL, VETERANS DAY.

50. ON VETERANS DAY 2006, DEFENDANTS PERMITTED OTHER TENANTS AT THE SUBJECT FACILITY TO HANG SUCH THINGS ON THEIR BALCONIES AS WIND CHIMES HANGING FROM PARTICULAR BALCONY CEILINGS; THERMOMETERS HANGING ON PARTICULAR BALCONY WALLS; PLANTERS.

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HANGING ON PARTICULAR BALCONY RAILS; BELL HANGING FROM A PARTICULAR BALCONY CEILING; HOOKS HANGING ON PARTICULAR BALCONY WALLS; FLAG HOLDERS HANGING ON PARTICULAR BALCONY RAILS; AND EVEN THE AFOREMENTIONED HANGING UMBRELLAS ON PARTICULAR BALCONY RAILS.

51. DEFENDANTS PERMITTED THESE ABOVE AFOREMENTIONED ITEMS TO BE HUNG OR TO BE FASTENED OR STRAPPED ON OTHER TENANTS' BALCONIES AND BALCONY RAILS ON VETERANS DAY 2006, AND THE SUBSEQUENT WINTER HANGING OF SEASONAL DECORATIONS SUCH AS WREATHES ON THE TENANTS' BALCONY WALLS AND BALCONY RAILS, EVEN THOUGH DEFENDANT ROTAN STATED THAT SUCH HANGINGS ON BALCONIES ARE NOT PERMITTED AT THE SUBJECT FACILITY.

52. IN THE FACE OF DEFENDANTS' ALLEGED DISCRETIONARY AUTHORITY TO REPEAT DEFENDANTS' HUD-SUBSIDIZED HANGING OF THE AMERICAN FLAG ACTIVITY ON TENANTS' BALCONY RAILS, INCLUDING PLAINTIFFS' BALCONY RAIL; AUTHORITY TO ACCEPT OTHER TENANTS' HANGING PATIO UMBRELLAS ON TENANTS' BALCONY RAILS; AUTHORITY TO ACCEPT OTHER TENANTS' DECORATIONS ON TENANTS' BALCONIES; AND YET DENY PLAINTIFFS' ABILITY TO HANG THEIR AMERICAN FLAG ON THEIR RENTED APARTMENT'S BALCONY RAIL ON A NATIONAL HOLIDAY, HAS HAD A DISPROPORTIONATE IMPACT ON PLAINTIFFS AND CAUSED PLAINTIFFS GREAT MENTAL ANGUISH AND EMOTIONAL, AND EVEN PHYSICAL DISTRESS.

53. ON JULY 27, 2006, PLAINTIFFS HAD MADE THE AFOREMENTIONED HOUSING DISCRIMINATION COMPLAINT WITH HUD (THE AGENCY PRIMARILY CHARGED WITH THE FAIR HOUSING ACT IMPLEMENTATION AND ADMINISTRATION) WHERE PLAINTIFFS REPORTED ALLEGED NATIONAL ORIGIN DISCRIMINATION IN THE REPORTED PLAINTIFFS' INABILITY TO HANG THEIR AMERICAN FLAG ON THEIR RESPECTIVE BALCONY.

54. ONLY AFTER HUD'S FORWARDING OF THE ABOVE AFORESAID ALLEGED DISCRIMINATION COMPLAINT TO DSHA FOR DETERMINATION, AND DESPITE DEFENDANT BUILDING MANAGER ROTAN'S RULES ISSUED ON OR ABOUT SEPTEMBER 13, 2006, FOR ALL THE TENANTS, INCLUDING PLAINTIFFS, TO

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PROMPTLY REMOVE THEIR FLAGS FROM TENANTS' RESPECTIVE BALCONIES, DID DEFENDANT ROTAN SUDDENLY PROMULGATE NEW RULES ON SEPTEMBER 18, 2006, STATING, IN WRITING, THAT TENANTS CAN NOT HANG FLAGS ON TENANTS' PRIVATE BALCONIES, BUT THAT A FLAG MAY BE PUT ON A STICK IN A FLOWER POT OR A FLAG MAY BE DRAPED ON A CHAIR. 35. DEFENDANTS' FOREGOING ACTS ON 9/15/06, INSTRUCTING TENANTS, INCLUDING PLAINTIFFS, TO PROMPTLY REMOVE THEIR FLAGS ON THEIR RENTED BALCONIES; ON 9/18/06, INSTRUCTING TENANTS, INCLUDING PLAINTIFFS, THAT THEY MAY NOW PUT THEIR FLAG IN A FLOWER POT OR DRAPE THEIR FLAG ON A CHAIR; ON 10/30/06, PROHIBITING PLAINTIFFS FROM STRAPPING THEIR AMERICAN FLAG ON THEIR RESPECTIVE BALCONY RAIL, WHILE DEFENDANTS PERMIT PATIO UMBRELLAS TO BE STRAPPED ON OTHER TENANT'S BALCONY RAILS, AS WELL AS OTHER HANGINGS ON OTHER TENANT'S BALCONY CEILINGS, WALLS, AND RAILS; AND, ON 9/15/06, WHERE DEFENDANTS GIVE THEMSELVES, IN PARTICULAR CIRCUMSTANCES, PERMISSION TO STRAP THEIR AMERICAN FLAGS ON TENANTS' BALCONY RAILS, TOOK PLACE IN A CONTEXT OF OTHER ALLEGED DEFENDANTS' DISCRIMINATORY ACTS TOWARDS PLAINTIFFS.

56. IN ABOUT 1993, DEFENDANT ROTAN HARASSED AND TRIED TO INTIMIDATE THE PLAINTIFFS DURING INSPECTIONS OF THEIR APARTMENT. SHE ORDERED PLAINTIFFS TO REMOVE A CERTAIN KIND OF PEEL-BACKING WALLPAPER BORDER FROM ABOVE THE TOP EDGE OF THEIR HALLWAY CLOSET METAL DOOR. AT ABOUT THE SAME TIME, UPON INFORMATION AND BELIEF, DEFENDANT ROTAN PERMITTED ANOTHER TENANT TO KEEP THE SAME KIND OF WALLPAPER BORDER ON THAT TENANT'S ENTIRE KITCHEN WALL, EVEN THOUGH ROTAN STATED TO PLAINTIFFS THAT SUCH A TYPE WALLPAPER BORDER WAS NOT PERMITTED IN THE B'NAI B'RITH HOUSE.

57. ON ANOTHER OCCASION, IN THE EARLY MID 1990'S, DEFENDANT ROTAN CALLED PLAINTIFFS CORWIN TO HER OFFICE AND, IN AN ACCUSATORY TONE AND ON THE BASIS OF AN ALLEGED REPORT TO HER FROM SOMEONE ELSE, ASKED PLAINTIFFS IF THEY HAD UNDERREPORTED THE NUMBER OF CARS THEY HAD AT B'NAI B'RITH HOUSE. IN FACT, PLAINTIFFS HAD NOT.

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58. IN 1997, DESPITE THE FACT THAT PLAINTIFFS ALWAYS PAID THEIR RENT ON TIME, DEFENDANT ROTAN BEGAN HARASSING PLAINTIFFS ON THE SUBJECT OF THEIR MEDICAL EXPENSES AND MEDICAL APPOINTMENT CAR MILEAGE EXPENSE IN THEIR ANNUAL HUD SECTION 8 RENT RECERTIFICATION. MRS. ROTAN DENIED PLAINTIFFS' ABILITY TO CLAIM MEDICAL APPOINTMENT MILEAGE EXPENSES IN USE OF THEIR OWN AUTOMOBILE, UNTIL A CERTAIN HUD OFFICIAL IN WASHINGTON, D.C., INSTRUCTED HER TO ALLOW THE CLAIM. EVEN THEN, DEFENDANT ROTAN CONDITIONED HER COMPLIANCE BY INSTRUCTING THE PLAINTIFFS TO TELL NO OTHER TENANT AT THE B'NAI B'RITH HOUSE ABOUT IT.

59. IN 1998, DEFENDANT ROTAN AGAIN HARASSED PLAINTIFFS ABOUT THEIR ANNUAL RENT RECERTIFICATION HEALTH EXPENSES, WHEN SHE ACCUSED PLAINTIFFS OF "PADDING" THEIR RECEIPTS BY PURCHASING TOO MANY AIR CLEANERS. IN FACT, DUE TO THE INDUSTRIAL FUMES IN CLAYMONT - DELAWARE RIVER AREA, THE PLAINTIFFS NEEDED SMALL AIR CLEANERS FOR THE FOUR ROOMS IN APARTMENT UNIT.

60. IN THE LATE 1990'S, DEFENDANT ROTAN HARASSED AND TRIED TO INTIMIDATE THE PLAINTIFFS DURING INSPECTION OF THEIR APARTMENT. DEFENDANT ROTAN ORDERED PLAINTIFFS TO REMOVE A CHRISTIAN PRAYER HUNG ON PLAINTIFFS' APARTMENT FRONT DOOR, OBSTENSIBLY BECAUSE IT WAS HUNG BY A SMALL SCREW.

61. AT ABOUT THE SAME TIME, DEFENDANT ROTAN PERMITTED OTHER TENANTS TO KEEP ITEMS ON THEIR FRONT DOORS WHICH HUNG ON SMALL SCREWS AND EVEN LARGER NAILS, INCLUDING PICTURE FRAMES, WREATHES, ANGELS, AND MAZZUAZAHs, EVEN THOUGH ROTAN STATED TO PLAINTIFFS THAT SUCH HANGINGS ON APARTMENT FRONT DOORS WERE NOT PERMITTED TO BE HUNG BY A NAIL OR SCREW AT THE FACILITY.

62. BEGINNING 2000, DEFENDANT ROTAN WAS RELUCTANT AND TARDY IN ACTING TO RESOLVE THE PROBLEM OF DELETERIOUS SECOND-HAND SMOKE COMING INTO PLAINTIFFS' UNIT FROM THE UNIT NEXT DOOR OCCUPIED BY A HEAVY CIGARETTE SMOKER, AND ALTHOUGH THIS PROBLEM WAS BROUGHT TO SAID DEFENDANT'S ATTENTION SEVERAL TIMES.

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63. IN 2001, DEFENDANT ROTAN DENIED PLAINTIFF'S REQUEST THAT THEY BE ALLOWED TO HANG A FLOWER BASKET ON THEIR PERSPECTIVE BALCONY RAIL TO BLOCK OUT A NEARBY STROBE LIGHT'S GLARE, EVEN THOUGH OTHER TENANTS WERE PERMITTED TO MAINTAIN SUCH HANGING FLOWER BASKETS OR FLOWER BOXES ON THEIR BALCONY RAILS.

64. IN OR ABOUT DECEMBER 05, 2003, IN TENANTS' DISPUTE AT THE SUBJECT FACILITY BETWEEN THOSE TENANTS THAT WANTED NATIVITY SCENES AND THOSE TENANTS THAT COMPLAINED ABOUT NATIVITY SCENES IN THE BUILDING'S HOLIDAY SETTINGS, DEFENDANT ROTAN BEGAN REMOVING TENANTS' PERSONALLY OWNED NATIVITY SCENES IN THE COMMON AREAS OF THE APARTMENT BUILDING, OSTENSIBLY BECAUSE THE NATIVITY SCENES WERE A VIOLATION OF THE DELAWARE AND FEDERAL FAIR HOUSING ACT (AND IN SOME CASES DISCARDED THE NATIVITY SCENES).

65. IN OR ABOUT JANUARY, 2004, DEFENDANT ROTAN VERBALLY DEMANDED PLAINTIFFS NOT TO DONATE ITEMS TO OTHER TENANTS WHEN PLAINTIFFS HAD DONATED A PERSONAL ITEM AT A FLOOR'S COMMON AREA TABLE.

66. AT ABOUT THE SAME TIME, UPON INFORMATION AND BELIEF, OTHER TENANTS ARE PERMITTED TO DONATE ITEMS TO EACH OTHER IN THE COMMON AREAS ON ALL FLOORS AT THE SUBJECT FACILITY.

67. IN OR ABOUT FEBRUARY 4, 2004, DEFENDANT ROTAN CHARGED AND DEMANDED OF THE PLAINTIFFS AN EVEN GREATER AMOUNT OF MONTHLY RENTAL MONIES WITHOUT PROVIDING THE PLAINTIFFS THEIR RIGHT TO AN INTERIM 202/8 LEASE AND THEIR RIGHT TO SIGN A 202/8 LEASE.

68. IN OR ABOUT FEBRUARY 23, 2004, DEFENDANT ROTAN REQUESTED THE PLAINTIFFS TO REMOVE THEIR OUTDOOR FURNITURE DECK BOX FROM THEIR PRIVATE BALCONY AFTER THE DECK BOX HAD BEEN THROUGH INSPECTIONS WITHOUT CITATION.

69. IN OR ABOUT APRIL 20, 2004, DEFENDANT ROTAN REQUESTED THAT PLAINTIFFS REMOVE THEIR 7 1/2" LONG CRUCIFIX, HANGING ON PLAINTIFFS' PRIVATE BALCONY WALL, AFTER THE CRUCIFIX, SECURELY FASTENED, HAD BEEN THROUGH INSPECTION WITHOUT CITATION SINCE 1993.

70. AT ABOUT THE SAME TIME, DEFENDANT ROTAN PERMITTED AND SET

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DIFFERENT PRIVILEGES FOR OTHER TENANTS TO HANG FLOWER BOXES; PLANTS; UMBRELLAS; PLANTERS; WIND CHIMES; FLAGS; THERMOMETERS; BELL; HANGING SEASONAL DECORATIONS; AND PINWHEELS ON THEIR BALCONIES EVEN THOUGH DEFENDANT ROTAN STATED THAT SUCH HANGINGS ON BALCONIES ARE NOT PERMITTED AT THE B'NAI BRITH HOUSE FOR SENIOR CITIZENS.

71. IN LATE SUMMER 2004, DEFENDANT ROTAN GAVE WRITTEN NOTICE TO ALL TENANTS AT THE FACILITY, INCLUDING PLAINTIFFS, THAT TENANTS MUST ATTEND MANDATORY MEETINGS WITH DEFENDANT ROTAN, WHERE, UPON INFORMATION AND BELIEF, TENANTS WERE FORCED TO REGISTER, AND EVEN THOUGH SUCH MANDATORY MEETINGS ARE ILLEGAL IN THE HUD-SUBSIDIZED FACILITY.

72. BEGINNING 2006 (AND RETROACTIVE TO 2002) UPON INFORMATION AND BELIEF, DEFENDANT ROTAN FAILED TO ENSURE PLAINTIFFS THE PROPER EXCLUSIONS AND DEDUCTIONS IN DEFENDANT ROTAN'S CALCULATION OF PLAINTIFFS' RENT AMOUNT, RESULTING IN PLAINTIFFS' RENT BEING OVERCHARGED.

73. ON OR ABOUT NOVEMBER 20, 2006, DEFENDANT ROTAN, IN WRITING, DENIED PLAINTIFFS' WRITTEN REQUEST OF OCTOBER 16, 2006 FOR DEFENDANTS TO INCLUDE TWO (3) CHRISTIAN HOLY DAYS (ASH WEDNESDAY AND THREE KING DAY) IN DEFENDANTS' NEWSLETTER CALENDAR, OSTENSIBLY BECAUSE DEFENDANTS "CANNOT AND DO NOT LIST EVERY HOLY DAY" (UNLESS THERE IS A PERQUISITE FOR A RELIGIOUS SERVICE THAT DAY AT THE SUBJECT FACILITY OR IF THE BUILDING IS CLOSED).

74. AT ABOUT THE SAME TIME, UPON INFORMATION AND BELIEF, DEFENDANT ROTAN PERMITS OTHER RELIGIOUS HOLY DAYS, SUCH AS THE PASSOVER, TO BE LISTED IN THE DEFENDANTS' BUILDING NEWSLETTER CALENDAR ACTIVITY, AND WITHOUT THE ABOVE AFOREMENTIONED PERQUISITE.

75. DEFENDANT ROTAN'S MOST RECENT ACT OF ALLEGED DISCRIMINATION OCCURRED ON OR ABOUT DECEMBER 7, 2006, WHERE DEFENDANT ROTAN REQUESTED, IN WRITING, THAT ALL TENANTS, INCLUDING PLAINTIFFS,

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MUST REMOVE ANY HANGING ITEM OVER THEIR APARTMENT FRONT DOOR WHERE, SUBSEQUENTLY, PLAINTIFFS HAD TO REMOVE THEIR 3" x 5" CRUCIFIX (EVEN THOUGH THE CRUCIFIX WAS SECURELY FASTENED).

76. AT ABOUT THE SAME TIME, UPON INFORMATION AND BELIEF, DEFENDANT ROTAN PERMITTED ANOTHER TENANT TO HANG A SLEIGH AND RAINDOOR DECORATION OVER THAT TENANTS' APARTMENT FRONT DOOR, MUCH LARGER THAN THE PLAINTIFFS' CRUCIFIX, AND EVEN THOUGH DEFENDANT ROTAN STATES THAT SUCH HANGINGS OVER TENANTS' FRONT DOOR ARE NOT PERMITTED.

77. DESPITE DEFENDANTS' EFFORTS IN DENYING PLAINTIFFS THE ABILITY TO HANG THEIR AMERICAN FLAG ON THEIR RESPECTIVE BALCONY RAIL, WHILE PERMITTING OTHER TENANTS TO HANG EVEN LARGER PATIO UMBRELLAS ON THEIR BALCONY RAILS, SYMBOLS OF THE AMERICAN FLAG REMAIN PROMINENT IN THE BUILDING. THEY INCLUDE THE AMERICAN FLAG (ON A STAND) AND AN AMERICAN FLAG BARNSIDE PAINTING, IN THE SOLARIUM; THE AMERICAN FLAG (ON A STAND) AT THE MACHZIKEY HADAS CONGREGATION'S RISER; THE AMERICAN FLAG (HOISTED A POLE) ON WEEKDAYS AT THE SUBJECT FACILITY'S OUTSIDE ENTRANCE; A SEASONAL STARS AND STRIPE DECORATION AT THE DEFENDANTS' OFFICE DOOR; TWO (2) AMERICAN FLAGS AT THE TENANTS ASSOCIATION LOBBY COMMISSARY DOORS; THE AMERICAN FLAG POSTED ON DEFENDANTS' NEWSLETTER COVER, IN THE PAST; THE STONE SCHOOL HOUSE AMERICAN FLAG PAINTING, THE COURT HOUSE AMERICAN FLAG PAINTING, AND THE GRAND OPERA HOUSE AMERICAN FLAG PAINTING, IN THE DELAWARE ROOM; THE AMERICAN FLAG ON TWENTY-THREE (23) TENANTS' APARTMENT DOORS; THE AMERICAN FLAG STICKERS ON THREE (3) TENANTS' LOBBY MAILBOXES; AND THE AMERICAN FLAG (12" x 18" FLAG ON A 24 1/2" STICK POLE) HANGING OVER THE SUBJECT FACILITY'S OUTSIDE MAINTENANCE GARAGE DOOR ON NATIONALLY-OBSERVED VETERANS DAY 2006 AND CONTINUING.

78. THE HISTORIC BACKDROP OF DEFENDANTS IN A PREVIOUS ALLEGED FAIR HOUSING DISCRIMINATION COMPLAINT, IS WHERE DEFENDANTS SETTLED AND THEIR APARTMENT MANAGEMENT AGENCY, SPM. INC.,

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ON JUNE 15, 2006, REIMBURSED PLAINTIFFS' OUT-OF-POCKET COSTS, BUT WHERE DEFENDANTS HAVE NEVER COMMUNICATED WITH PLAINTIFFS IN PLAINTIFFS' AMERICAN FLAG HANGING COMPLAINT IN ORDER TO MINIMIZE DEFENDANTS' FLAG HANGING POLICY, SO THAT THERE WOULD BE LESS IMPACT ON PLAINTIFFS IN THE HANGING OF AN AMERICAN FLAG ON THEIR BALCONY FOR VETERANS DAY 2006.

79. AT OTHER B'NAI B'RITH APARTMENT HOUSES, UPON INFORMATION AND BELIEF CONCERNING VETERANS DAY 2006, IS WHERE THE TENANTS' AMERICAN FLAG HANGING IS PERMISSIBLE EITHER ON BALCONY RAILS OR AS LONG AS THE AMERICAN FLAG IS HUNG ON THE TENANTS' RESPECTIVE BALCONY AT RAIL-HIGH MEASUREMENT.

80. AT THE SUBJECT FACILITY IN CLAYMONT, DELAWARE, DEFENDANTS' POLICY FOR TENANTS' BALCONY FLAG FLYING, INCLUDING ON PLAINTIFFS' BALCONY, IS ALLEGEDLY "EXCESSIVE" WITH IT'S "NO FLAG HANGING" POLICY (WHERE A TENANT CANNOT ATTACH HIS OR HER AMERICAN FLAG TO HIS OR HER BALCONY OR HIS OR HER BALCONY RAIL), AND WHERE THE DEFENDANTS' FLAG POLICY IS ALLEGEDLY UNFAIR (SEE HUD HANDBOOK 5301.3 § 69, WHICH STATES THAT HOUSE RULES MUST NOT INFRINGE ON TENANTS CIVIL RIGHTS) AND THIS IS WHERE CERTAIN OTHER TENANTS AT THE SUBJECT FACILITY, ON VETERANS DAY 2006, SIMPLY IGNORED THE HOUSE RULES, USING THEIR OWN COMMON SENSE, AND HUNG THEIR AMERICAN FLAGS ON THEIR BALCONIES ANYWAY.

81. DEFENDANTS HAVE PUBLISHED A NOTICE TO ALL TENANTS, INCLUDING THE PLAINTIFFS, WARNING THAT THEY ARE SUBJECT TO EVICTION IF THEY DO NOT COMPLY WITH DEFENDANTS' POLICIES.

82. PLAINTIFFS HAVE REFRAINED FROM HANGING THEIR AMERICAN FLAG ON THEIR PERSPECTIVE BALCONY RAIL, FOR FEAR OF EVICTION OR OTHER FORMS OF DISCRIMINATORY ACTION AGAINST THEM.

COUNT 1

(VIOLATION OF FAIR HOUSING ACT, 42 U.S.C. § 3601, ET SEQ.)

83. PLAINTIFFS HEREBY INCORPORATE BY REFERENCE § 1-82 OF THIS COMPLAINT.

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84. THE ACTIONS OF DEFENDANTS CONSTITUTE UNLAWFUL NATIONAL ORIGIN DISCRIMINATION AGAINST PLAINTIFFS IN VIOLATION OF THE FAIR HOUSING ACT, TITLE VIII OF THE CIVIL RIGHTS ACT OF 1968, 42 U.S.C. § 3601, AND IN PARTICULAR (BUT WITHOUT LIMITATION) 42 U.S.C. § 3604 (B), WHICH PROHIBITS DISCRIMINATION AGAINST ANY PERSON IN THE TERMS, CONDITIONS, OR PRIVILEGES OF SALE OR RENTAL OF A DWELLING, OR IN THE PROVISION OF SERVICES OR FACILITIES IN CONNECTION THEREWITH, BECAUSE OF... NATIONAL ORIGIN.

85. PLAINTIFFS ARE MEMBERS OF A PROTECTED CLASS SET FORTH IN THE FAIR HOUSING ACT, IN THAT THEY ARE CITIZENS OF THE UNITED STATES OF AMERICA.

86. DEFENDANTS DIRECTLY DISCRIMINATED AGAINST PLAINTIFFS ON ACCOUNT OF THEIR NATIONAL ORIGIN BY BANNING PLAINTIFFS' AMERICAN FLAG FROM HANGING ON PLAINTIFFS' BALCONY RAIL, WHILE DEFENDANTS PERMITTED OTHER TENANTS TO HANG PATIO UMBRELLAS AND OTHER SUCH HANGING ON THEIR PERSPECTIVE BALCONY RAILS AND WHERE DEFENDANTS EVEN GAVE THEMSELVES PERMISSION, IN A PARTICULAR SITUATION, TO REPEAT THEIR AMERICAN FLAG HANGING ACTIVITY ON TENANTS' BALCONY RAILS, INCLUDING PLAINTIFFS' BALCONY RAIL (EVEN THOUGH THE DEFENDANTS HOPED THEY WOULD NEVER HAVE TO).

87. DEFENDANTS HAVE SELECTIVELY ENFORCED AGAINST PLAINTIFFS, BUT NOT AGAINST OTHER B'NAI B'RITH HOUSE TENANTS, THEIR ALLEGED HOUSING POLICY REGARDING HANGING ITEMS ON BALCONIES AND THEREBY INTERFERED TO KEEP PLAINTIFFS FROM THE FULL BENEFIT OF THE FEDERAL FAIR HOUSING LAW.

88. DEFENDANTS FURTHER UNLAWFULLY FAILED TO ACCOMMODATE PLAINTIFFS' NATIONAL ORIGIN BELIEFS AND OBSERVANCES, DESPITE A REQUEST FOR, AND/OR DEFENDANTS' KNOWLEDGE OF THE NEED, FOR SUCH ACCOMMODATION, AND ONLY INFORMALLY (AND NON-BINDINGLY) SUDDENLY WITHDREW THEIR REFUSAL TO ACCOMMODATE TENANTS' FLAGS, INCLUDING THE PLAINTIFFS' FLAG, BY INSTRUCTING TENANTS THAT THEY MAY PLACE THEIR FLAGS IN A FLOWER POT, AND AFTER COMPLAINTS

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WERE MADE AT DEFENDANT ROTAN'S OFFICE BY OTHER TENANTS.
89. WHERE DEFENDANTS COULD HAVE MADE A LESS DISCRIMINATORY EFFECT BY ADOPTING A FLAG FLYING POLICY THAT WOULD ENABLE PLAINTIFFS' AMERICAN CITIZENSHIP INTEREST SERVED WITH LESS DISCRIMINATORY IMPACT, OTHER THAN PLACING THE AMERICAN FLAG IN A FLOWER POT, DEFENDANTS DID NOT; BUT PUT "EXCESSIVE" LIMITS ON ALL TENANTS, INCLUDING PLAINTIFFS, IN FLAG HANGING ON THEIR BALCONIES.
90. DEFENDANTS' ACTIONS HAVE, MOREOVER, CREATED A HOSTILE ENVIRONMENT IN WHICH THE CONDITIONS AND TERMS OF RENTAL OCCUPANCY WERE CHANGED IN A DISCRIMINATORY MANNER.
91. DEFENDANTS' ACTIONS WERE BOTH WILLFUL AND MALICIOUS.
92. PLAINTIFFS REASONABLY FEAR THAT ABSENT JUDICIAL INTERVENTION BY WAY OF INJUNCTIVE RELIEF, THEY WILL BE IRREPARABLY HARMED BY FUTURE VIOLATION OF THEIR NATIONAL ORIGIN BELIEFS AND EXPRESSIONS IN THE MANNER PLEADED ABOVE, AS WELL AS BEING SUBJECT TO EVICTION ON ACCOUNT OF THEIR NATIONAL ORIGIN BELIEFS.

COUNT II

(VIOLATION OF DELAWARE FAIR HOUSING ACT, 6 DEL.C. § 4601, ET SEQ.)

93. PLAINTIFFS HEREBY INCORPORATE HEREIN BY REFERENCE OF COUNT I OF THIS COMPLAINT, § 1-82 AND § 85-92.

94. DEFENDANTS' ACTIONS VIOLATE THE DELAWARE FAIR HOUSING ACT, 6 DEL.C. § 4601, ET SEQ AND, IN PARTICULAR, § 4603 (B)(2), WHICH PROHIBITS DISCRIMINATION AGAINST ANY PERSON IN THE TERMS, CONDITIONS OR PRIVILEGES OF SALE OR RENTAL OF A DWELLING, OR IN THE PROVISION OF SERVICES OR FACILITIES IN CONNECTION THEREWITH, BECAUSE OF... NATIONAL ORIGIN.

95. DEFENDANTS' ACTIONS WERE BOTH WILLFUL AND MALICIOUS.

96. PLAINTIFFS REASONABLY FEAR THAT ABSENT JUDICIAL INTERVENTION BY WAY OF INJUNCTIVE RELIEF, THEY WILL BE IRREPARABLY HARMED BY FUTURE VIOLATION OF THEIR NATIONAL ORIGIN BELIEFS AND EXPRESSIONS AND IN THE MANNER PLEADED ABOVE.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS SEEK JUDGMENT BY THIS COURT AGAINST
DEFENDANTS, JOINTLY, AND SEVERALLY, FOR THE FOLLOWING RELIEF:

AS TO COUNT I:

- A. AN AWARD OF COMPENSATORY AND PUNITIVE DAMAGES;**
- B. REASONABLE ATTORNEY'S FEES PURSUANT TO 42 U.S.C. § 3613(C)(2);**
- C. AN EFFECTIVE PERMANENT INJUNCTION AGAINST FUTURE
DISCRIMINATORY ACTS BY DEFENDANTS;**
- D. SUCH OTHER RELIEF AS THIS COURT MAY DEEM JUST AND PROPER.**

AS TO COUNT II:

- A. AN AWARD OF COMPENSATORY AND PUNITIVE DAMAGES;**
- B. REASONABLE ATTORNEY'S FEES PURSUANT TO 6 DEL.C. § 4613(B)(3);**
- C. AN EFFECTIVE PERMANENT INJUNCTION AGAINST FUTURE
DISCRIMINATORY ACTS BY DEFENDANTS;**
- D. SUCH OTHER RELIEF AS THIS COURT MAY DEEM JUST AND PROPER.**

JURY DEMAND

PLAINTIFFS HEREBY DEMAND TRIAL BY JURY OF ALL ISSUES SO TRIABLE.

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I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE
AND CORRECT.

SIGNED THIS 14th DAY OF March, 2007

Amice Corwin POA Amice Corwin
SIGNATURE OF PLAINTIFF #1

Amice Corwin
SIGNATURE OF PLAINTIFF #2

PRO-SE LITIGATES
B'NAI B'RITH HOUSE
8000 SOCIETY DRIVE
APARTMENT #608
CLAYMONT, DELAWARE 19703-1749
TELE/FAX (302) 798-5116

EXHIBIT "2"

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Citation: **153 Fed. Appx. 860**

*153 Fed. Appx. 860, *; 2005 U.S. App. LEXIS 23793, ***

EDWARD J. BARR, Appellant v. THE CAMELOT FOREST CONSERVATION ASSOCIATION, INC.,
A Pennsylvania Corporation; JERRY RIZZO, in his individual capacity and in his official
capacity as President of the Camelot Forest Conservation Association, Inc.; GERALD MAZUR,
in his individual capacity and in his official capacity as former President of the Camelot Forest
Conservation Association, Inc.; CAROL GREELEY, in her individual capacity and in her official
capacity as former Resident Manager for the Camelot Forest Conservation Association, Inc.;
THE OFFICE OF THE DISTRICT ATTORNEY FOR THE COUNTY OF MONROE; MARK
PAZUHANICH, in his official capacity as former District Attorney for the County of Monroe;
LESLIE DUTCHCOT, in her individual capacity and in her official capacity as Assistant District
Attorney; ROBERT J. SNELL, in his individual capacity and in his official capacity as a Stroud
County Detective

NO. 05-2129

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

153 Fed. Appx. 860; 2005 U.S. App. LEXIS 23793

August 10, 2005, Submitted Under Third Circuit LAR 34.1(a)
November 3, 2005, Filed

NOTICE: [1]** RULES OF THE THIRD CIRCUIT COURT OF APPEALS MAY LIMIT CITATION
TO UNPUBLISHED OPINIONS. PLEASE REFER TO THE RULES OF THE UNITED STATES COURT
OF APPEALS FOR THIS CIRCUIT.

SUBSEQUENT HISTORY: US Supreme Court certiorari denied by Barr v. Camelot Forest
Conservation Ass'n, 2006 U.S. LEXIS 4545 (U.S., June 12, 2006)

PRIOR HISTORY: On Appeal From the United States District Court For the Middle District of
Pennsylvania. (M.D. Pa. Civ. No. 04-cv-00911). District Judge: James M. Munley.

CASE SUMMARY

PROCEDURAL POSTURE: Plaintiff real estate salesman filed a 42 U.S.C.S. § 1983 suit
against defendants, an association and its members (association defendants) and a county
detective, a district attorney's office, and two of its employees (county defendants),
alleging that defendants had violated his U.S. Const. amends. I, XIV, rights. The salesman
appealed after the United States District Court for the Middle District of Pennsylvania
dismissed his complaint.


OVERVIEW: The salesmen alleged that association defendants violated his constitutional
rights by enforcing restrictions on the posting of signs in a real estate development and
that county defendants violated his constitutional rights by refusing to prosecute his
private criminal complaint against association defendants. The district court held that the
Rooker-Feldman doctrine precluded all of the salesman's claims, except for his claims
under 18 U.S.C.S. §§ 241, 242, and 245, and that he lacked standing to assert civil claims
under those criminal statutes. Although the court disagreed with the district court's
Rooker-Feldman holding, it found that the complaint was properly dismissed under Fed. R.
Civ. P. 12(b)(6). The court agreed with the district court's finding as to the salesman's



criminal statute claims. Association defendants could not be held liable in the 42 U.S.C.S. § 1983 suit because they were not state actors. The salesman had failed to allege sufficient facts showing that the detective or the district attorney's office had violated his constitutional rights. Prosecutorial immunity applied to the employees with regard to their decision not to prosecute association defendants.


OUTCOME: The court affirmed the district court's judgment dismissing the salesman's complaint.


CORE TERMS: deprivation, constitutionally protected right, federal criminal, state action, prosecutorial immunity, constitutional claim, motions to dismiss, failed to state, permission, prosecute



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HN1 ⚡ The Rooker-Feldman doctrine does not apply to federal actions that simply raise claims previously litigated in state court unless the federal action invites the federal court to overturn the state court judgment. [More Like This Headnote](#)





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HN2 ⚡ The United States Court of Appeals for the Third Circuit's review of a district court's order granting dismissal pursuant to Fed. R. Civ. P. 12(b)(6) is plenary. The Third Circuit accepts as true all factual allegations in the complaint and will affirm a dismissal under Rule 12(b)(6) only if it is certain that no relief can be granted under any set of facts which could be proved. [More Like This Headnote](#)

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HN3 ⚡ The First Amendment prohibits governmental, not private, infringement of free speech. [More Like This Headnote](#)


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HN4 ⚡ The Fourteenth Amendment prohibits the state, not private individuals, from depriving any person of a constitutionally protected right. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)


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[Constitutional Law](#) > [Substantive Due Process](#) > [General Overview](#) 
HN5 ⚡ As a threshold matter, in order to make out a constitutional claim under the First and Fourteenth Amendments, a plaintiff must allege state action. [More Like This Headnote](#)


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HN6 ⚡ Under 42 U.S.C.S. § 1983, a plaintiff must show that the alleged deprivation was committed by a person acting under color of state law, in addition to alleging a deprivation of a constitutionally protected right. [More Like This Headnote](#)


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HN7 ⚡ Absent any state action, a district court properly dismisses a plaintiff's U.S. Const. amends. I, XIV, claims and 42 U.S.C.S. § 1983 claims for failure to state a claim


upon which relief may be granted. [More Like This Headnote](#) | [Shepardize: Restrict By Headnote](#)

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HN8  Prosecutorial immunity protects district attorneys from interference with their ability to exercise independent judgment when deciding which suits to bring and in conducting them in court. [More Like This Headnote](#)

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HN9  A 42 U.S.C.S. § 1983 suit against a county district attorney's office fails where the complaint is completely devoid of any allegation that an official policy, custom, or practice caused the alleged deprivation of the plaintiff's constitutional rights. [More Like This Headnote](#)

COUNSEL: EDWARD J. BARR, Appellant, Pro se, Pocono Lake, PA.

For THE CAMELOT FOREST CONSERVATION ASSOCIATION, INC., A Pennsylvania Corporation, JERRY RIZZO, in his individual capacity and in his official capacity as President of the Camelot Forest Conservation Association, Inc., GERALD MAZUR, in his individual capacity and in his official capacity as former President of the Camelot Forest Conservation Association, Inc., CAROL GREELEY, in her individual capacity and in her official capacity as former Resident Manager for the Camelot Forest Conservation Association, Inc., Appellees: Janet M. Catina, Stroudsburg, PA.

For DA MONROE, MARK PAZUHANICH, in his official capacity as former District Attorney for the County of Monroe, LESLIE DUTCHCOT, in her individual capacity and in her official capacity as Assistant District Attorney, ROBERT J. SNELL, in his individual **[**2]** capacity and in his official capacity as a Stroud County Detective, Appellees: Gerard J. Geiger, Newman, Williams, Mishkin, Corveleyn, Wolfe & Fareri, Stroudsburg, PA.

JUDGES: BEFORE: ROTH, McKEE and ALDISERT, CIRCUIT JUDGES.

OPINION:

[*861] PER CURIAM

Edward J. Barr appeals the order of the United States District Court for the Middle District of Pennsylvania granting the defendants' motions to dismiss his civil rights complaint pursuant to [Federal Rule of Civil Procedure 12\(b\)](#).

The underlying facts are well-known to the parties and are fully set forth in the District Court's Memorandum Opinion. We note only that Barr filed a complaint in the District Court in April 2004, which was amended in June 2004. Barr claimed that the named members of the Camelot Forest Preservation Association (the "Camelot defendants") arbitrarily invoked an old deed restriction common to all properties in the Camelot Forest development that prohibited the posting of "for sale" and/or "for rent" signs on properties without written permission of the Association. Barr continued to place for sale signs on Camelot Forest properties despite written notice from the Camelot defendants **[**3]** revoking their permission for him to do so. He contends that the Camelot Defendants stole and destroyed his for sale signs on at least eighty-eight separate occasions since 1998. Barr complained to the Pocono Mountain Regional Police Department about the alleged criminal activity. However, the police did not arrest or charge anyone. Barr then sought to lodge a private

criminal complaint against the Camelot defendants that County Detective Snell and the Monroe County District Attorneys (collectively the "County defendants") refused to prosecute. Barr alleged that the Camelot defendants' actions resulted in lost sales and business opportunities. He claimed that his First and Fourteenth Amendment rights were violated; he sought declaratory and injunctive relief under 18 U.S.C. §§ 241, [*862] 242 and 245 and 42 U.S.C. § 1983.

The defendants filed separate Rule 12(b) motions to dismiss. Both sets of defendants claimed that Barr's action was barred by the Rooker-Feldman Doctrine and by the Younger abstention, and that Barr failed to state a constitutional claim. The County defendants also claimed prosecutorial immunity. The District Court granted [**4] the dismissal motions, holding that the Rooker-Feldman Doctrine precluded all of Barr's claims except the alleged violations of federal criminal statutes, 18 U.S.C. §§ 241, 242 and 245. n1 The District Court dismissed the federal criminal statute claims because §§ 241, 242, and 245 are criminal offenses for which there is no civil remedy, and therefore, Barr lacked standing to bring them. Barr filed a timely appeal.

- - - - - Footnotes - - - - -

n1 We disagree that Rooker-Feldman precludes this action. HN1 The doctrine does not apply to federal actions that simply raise claims previously litigated in state court unless the federal action invites the federal court to overturn the state court judgment. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 161 L. Ed. 2d 454, 125 S. Ct. 1517 (2005). Although Barr's initial complaint appears to have presented such an invitation to the District Court, the amended complaint does not. Because it was not raised below, we decline to decide whether res judicata would have precluded Barr's federal claims.

- - - - - End Footnotes - - - - - [**5]

We have jurisdiction pursuant to 28 U.S.C. § 1291, and HN2 Our review of the District Court's order granting dismissal pursuant to Rule 12(b)(6) is plenary. See Weston v. Pennsylvania, 251 F.3d 420, 425 (3d Cir. 2001). We accept as true all factual allegations in the complaint and will affirm a dismissal under Rule 12(b)(6) only if it is certain that no relief can be granted under any set of facts which could be proved. Steamfitters Local Union No. 420 Welfare Fund v. Philip Morris Inc., et al., 171 F.3d 912, 919 (3rd Cir. 1999).

After a careful and independent review of the record, we will affirm judgment on the federal criminal statute claims as to all of the defendants for the reasons stated by the District Court in its memorandum opinion. As for the remaining claims, we will affirm dismissal in the defendants' favor on alternate grounds as further discussed below. See Univ. of Md. v. Peat Marwick Main & Co., 923 F.2d 265, 275 (3d Cir. 1991).

HN3 The First Amendment prohibits governmental, not private, infringement of free speech. Hudgens v. NLRB, 424 U.S. 507, 513, 96 S. Ct. 1029, 47 L. Ed. 2d 196 (1976). Similarly, [**6] HN4 the Fourteenth Amendment prohibits the state, not private individuals, from depriving any person of a constitutionally protected right. Shelley v. Kraemer, 334 U.S. 1, 13, 68 S. Ct. 836, 92 L. Ed. 1161 (1948). Thus, HN5 as a threshold matter, in order to make out a constitutional claim under the First and Fourteenth Amendments, Barr must allege state action. Likewise, HN6 under § 1983, Barr must show that the alleged deprivation was committed by a person acting under color of state law, in addition to alleging a deprivation of a constitutionally protected right. West v. Atkins, 487 U.S. 42, 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988); Mark v. Borough of Hatboro, 51 F.3d 1137, 1141 (3d Cir. 1995). Assuming all of Barr's allegations to be true, as we must, we conclude that there is no

set of facts from which we can infer state action on the part of the Camelot defendants. Here, acting on their own, without any state involvement, the Camelot defendants revoked their permission allowing Barr to place for sale signs on development properties and engaged in private enforcement of the regulation. ^{HN7} Absent any state action, the District Court properly dismissed the constitutional claims **[**7]** and § 1983 claims against the Camelot defendants for failure to state a claim upon which relief may be granted.

As for the County defendants, Barr asserts that the former and current District Attorneys for Monroe County wrongly refused to prosecute his private criminal complaint against the Camelot defendants. Assuming that Barr has alleged the violation of a constitutionally protected right, ^{HN8} prosecutorial immunity protects the District Attorneys from interference with their ability to exercise independent judgment "when deciding which suits to bring and in conducting them in court." Imbler **[*863]** v. Pachtman, 424 U.S. 409, 424, 96 S. Ct. 984, 47 L. Ed. 2d 128 (1976). As for Detective Snell, Barr failed to state a claim of a deprivation of a constitutional right against him for assisting the District Attorney in handling Barr's private complaint. Finally, Barr's ^{HN9} suit against the Monroe County Office of District Attorney fails because the amended complaint is completely devoid of any allegation that an official policy, custom, or practice caused the alleged deprivation. See Monell v. Dep't of Social Services, 436 U.S. 658, 690, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978).

For the foregoing **[**8]** reasons, we will affirm the District Court's judgment dismissing all of Barr's claims as to all defendants.







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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ISIDORE CORWIN AND BONNIE
CORWIN,

Plaintiffs,

V.

B'NAI B'RITH SENIOR CITIZEN
HOUSING, INC., SOUTHEASTERN
PROPERTY MANAGEMENT, INC.,
AND LYNNE ROTAN, an agent,
servant or employee of B'Nai B'Rith
Senior Citizen Housing, Inc.,

Defendants.

C.A. No.: 1:07-cv-00152-***

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Daniel A. Griffith, Esquire hereby certify that on the date indicated below a true and correct copy of Defendants', B'Nai B'Rith Senior Citizen Housing, Inc., Southeastern Property Management, Inc., and Lynne Rotan, Reply Brief in Support of Their Motion to Dismiss Plaintiffs' Complaint were forwarded to the below named addressee via electronic filing and U.S.

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Dated: May 16, 2007